

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: AUDIT OF UNITED CITIES
GAS COMPANY'S INCENTIVE
PLAN ACCOUNT (IPA) FOR THE
PERIOD OF APRIL 1, 2000, THROUGH
MARCH 31, 2001

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) DOCKET NO 01-00704
) EXECUTIVE SECRETARY
)

UNITED CITIES GAS COMPANY'S MOTION TO DISQUALIFY WITNESS

Comes now United Cities Gas Company, a Division of Atmos Energy Corporation ("UCG"), by and through counsel and respectfully moves that the Tennessee Regulatory Authority ("TRA") disqualify Don McCormac from testifying as a witness in this action. UCG submits the following in support of its motion.

At the April 30, 2002 Conference Agenda Session, UCG was advised by the Pre-hearing Officer, Richard Collier, that Dan McCormac would not be permitted to be involved either directly or indirectly in advising the TRA or any other party in regard to the issues under consideration in this docket due to his previous employment by the Consumer Advocate Division ("CAD") and his involvement as a material witness for the CAD in the underlying action on the performance based ratemaking mechanism (Docket No.s 95-01134 and 97-01364). At the prehearing conference on May 8, 2002, Mr. Collier again ruled on the record that Mr. McCormac was precluded from advising the Directors or the staff of the Authority in regard to this matter.

The Authority's decision to exclude Mr. McCormac is well grounded and entirely consistent with the high standards of ethical conduct mandated by statute and by the Authority's Code of Ethical Conduct for the Directors. As a matter of policy, the Code of Ethical Conduct (the "Code") requires that "[t]he Directors of the Authority must avoid all circumstances that suggest prejudice, bias, or personal gain is a factor in the conduct of the business and affairs of

the Authority." Code § I, Statement of Policy. The Code reflects the intention by the Directors to "foster the impartial administration of the duties, powers, and responsibilities entrusted to the Authority, and enhance the confidence of the public in the Authority." Id.

In particular, Cannons 1 and 2 of the Code provide in relevant part:

CANON 1. The Directors Shall Uphold the Integrity and Independence of the Authority.

An independent and responsible Authority is necessary to assure that the business of the Authority is conducted justly, fairly, and without improper bias. **The Directors shall establish, maintain, and enforce high standards of conduct for themselves and the employees of the Authority.** The provisions of this code shall be construed and applied to assure the integrity and independence of the Authority. (emphasis added)

CANON 2. The Directors Shall Avoid Impropriety and the Appearance of Impropriety in All Their Activities.

- a. The Directors shall respect and comply with the laws of the State of Tennessee and the United States and shall act honestly and impartially so as to promote public confidence in the integrity and independence of the Authority.

The Authority's decision on its own initiative to exclude Mr. McCormac from this proceeding is consistent with the Code's mandate to avoid the appearance of impropriety and to avoid all circumstances that suggest prejudice and/or bias as a factor in the conduct of the business and affairs of the Authority.

Prior to Mr. McCormac's appointment as Chief of the Authority's Energy and Water Division, he was employed by the CAD as a technical and financial analyst. In fact, he was a material witness for the CAD in Docket No. 97-01364. In Docket No. 97-01364, the CAD intervened and through the testimony of Mr. McCormac strongly objected to the entire structure of the performance based ratemaking mechanism ("PBR") which was the subject of the proceeding. A review of Mr. McCormac's prefiled and hearing testimony in Docket No. 97-

01364 illustrates that he expressed opinions and bias against the implementation of the PBR. Cf. Code, Canon 3.b (stating that a Director shall not participate if the Director has been a material witness concerning the matter in controversy).

Mr. McCormac only left his position with the CAD within the last twelve to thirteen months to join the TRA as Chief of the Energy and Water Division. Cf. Code, Canon 3.c (stating that a Director shall not participate in a proceeding if the Director was previously employed within 18 months of the date when the proceeding commences by a party to the proceeding). During the entire plan year that is the subject of the current audit, April 1, 2000-March 31, 2001, Mr. McCormac was employed by the CAD. When he joined the Authority as Chief of the Energy and Water Division, Mr. McCormac was disqualified from any involvement in matters then pending before the TRA in which the CAD was a party. The decision to exclude Mr. McCormac in the instant case from making recommendations and providing advice to the Authority in the form of expert testimony and/or formal recommendations is entirely consistent with the high ethical standards followed by the Authority and Mr. McCormac since the date of his employment.

Although Mr. McCormac has been disqualified from furnishing the Authority with advice or recommendations in this action, he has been listed as a witness by both the TRA staff (participating as a party) and the CAD. The TRA staff intends to have Mr. McCormac testify to "the Authority's approval of and the principals of the United Cities Gas Company's performance based ratemaking mechanism, the report and audit process, and the regulatory issues surrounding gas purchasing." See TRA staff witness list. As such, Mr. McCormac will obviously be offering testimony on the ultimate issues in this action.

Simply calling Mr. McCormac as a "witness" does not remove the taint of impropriety that the Authority recognized in shielding him from the proceeding. By calling Mr. McCormac as a "witness" both the TRA staff and the CAD are attempting to circumvent the Authority's ruling on Mr. McCormac's disqualification. It is important to note that the Authority initially made the decision to disqualify Mr. McCormac on its own initiative rather than at the request of UCG.

Accordingly, UCG respectfully requests that the Authority grant its motion to exclude Mr. McCormac as a witness in this cause in order to avoid any suggestion of prejudice, bias or the appearance of impropriety and to foster the impartial administration of the duties, powers and responsibilities entrusted to the Authority.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been faxed and mailed, postage prepaid, to the following parties of interest this 14th day of May, 2002:

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